IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No. 932 of 2000

D.Incent Rani ..Appellant(Complainant)

-vs-

V.Sundaramoorthy .. Respondent(Accused)

This appeal has been filed under section 378 of Cr.P.C. against the Judgment made in S.T.C.No.1547 of 1998 dated 01.08.2000 on the file of the Court of Judicial Magistrate, Udumalpet.

For appellant : : Mr.K.Kalyanasundaram
For respondent : : Mr.R.Jayaseeelan

JUDGMENT

This appeal has been filed against the Judgment in S.T.C.No.1547 of 1998 on the file of the Court of Judicial Magistrate, Udumalpet. The complainant in S.T.C.No.1547 of 1998 is the appellant herein.

2. A complaint has been preferred under Section 200 Cr.P.C.for an offence under Section 304(A) IPC. Soon after the occurrence, P.W.1 the wife of the deceased in the accident had preferred Ex P1 complaint on 27.8.1997. Since the police have referred the case as 'mistake of fact' as evidenced by Ex D2,the complainant has preferred the private complaint.

3. The facts in brief as narrated in the complaint are that the complainant's husband Devamanoharan was working as a clerk in Sainik School, Amaravathi Nagar and that on 27.8.1997 at about 8.00 a.m., the complainant's husband Devamanoharan was riding on his scooter bearing Registration No.TN 41-B-2959 to his office carrying his minor son and P.W.1(wife) in the pillion seat. When the complainant's husband was nearing the guest house, the accused came from the opposite direction in his scooter dashed against the scooter of the complainant's husband resulting the complainant falling down from the scooter sustaining grievous injuries. Immediately, the complainant's husband was taken to Sainik School Hospital from where they referred her husband to Government Hospital, Udumalpet,where after giving first aid and since the doctor's in

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the Government hospital were on strike, P.W.1 took her husband to a private hospital and since the condition of her husband was serious, by then on the advise of the doctor of the private hospital, she took her husband to C.M.C. Hospital, Coimbatore and on the way to C.M.C.Hospital, her husband breathed his lost. Immediately she preferred a complaint with the police which was registered under Crime No.207 of 1997 but without proper investigation, the said complaint was referred by the police as 'mistake of fact'.

3a) The said private complaint was taken on file by the learned Judicial Magistrate in S.T.C.No. 1547 of 1998 and on appearance of the accused,on summons, the copies under Section 207 Cr.P.C were furnished to the accused. When the offence was explained to the accused, he pleaded not guilty.

4. Before the trial Court, P.Ws 1 to 5 were examined. Exs. P1 to P.3 were marked.

4a) P.W.1 is the complainant Incent Rani, the widow of deceased Devamanoharan. According to P.W.1, on 27.8.1997 at about 8.00a.m., her husband was proceeding in his scooter bearing Registration No.TN-41-B-2959 to his office along with her(P.W.1)his minor son as a pillion rider and when the scooter was nearing Amaravathi Guest house, the accused came in his scooter from west to east, ie.,in the opposite direction riding the same in a rash and negligent manner dashed against the scooter which was driven by her husband and that the occurrence was witnessed by one Tamilarasan, Subramaniam, Joseph, Murugaraj and Ramasamy and that he was given first aid in the Sainik School Hospital from where she took her husband to Government Hospital then to a private hospital and on the advise of the doctors of the private hospital, she took him to headquarters hospital at Coimbatore and on the way, her husband breathed his lost and that she preferred a complaint with the police on 27.8.1997 itself which was registered under Crime No.207 of 1997. Since the police without proper investigation of the said complaint had referred as 'mistake of fact'. She preferred a private complaint. She would further state that the accused was riding on his scooter bearing Registration No.TN-Z-1819 at the time of occurrence.

4b) P.W.2, Murugaraj would say that while he was proceeding in his scooter at 7.55 a.m., on 27.8.1997, he saw the husband of P.W.1 Devamanoharan about 30 feet in front of him in his scooter bearing Registration No.TN-41-B-2959 along with his son on the pillion seat. At that time, the accused came in his scooter bearing Registration No.TN-Z-1819 from the opposite direction riding the scooter in a rash and negligent manner dashed against the scooter of P.W.1's husband causing grievous hurt to P.W.1's husband and immediately he along with Ramasami, Joseph, Subramaniam and Tamilarasan took the injured to the hospital. After giving first aid at Sainik School Hospital, the doctor in the hospital at Sainik School advised to take the injured to the Government Hospital, Udumalpet and that since the Government Doctors were on strike,

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he took the injured to a private hospital at Udumalpet. Since they have referred the injured to the Government Hospital, Coimbatore,he took the injured to the Government Hospital, Coimbatore but on the way the injured breathed his lost.

4c) P.W.3 Ramasami also corroboratess the evidence of P.Ws 1 and 2 who would depose only due to the rash and negligent driving of the accused, the accident had occurred.

4d) P.W.4, Tamilarasan, Clerk in the Sainik School, Amaravathi Nagar, would depose that on 27.8.1997 at about 8.00a.m., while he was proceeding to his work spot, he saw the accused going from west to east in his scooter dashed against the scooter in which the deceased was riding and that due to the impact, the deceased had fallen down and sustained grievous injuries and that the injured died on the way to Government Hospital,Coimbatore.

4e)P.W.5, Doctor Soundararajan, who had conducted postmortem on the corpse of Devamanoharan. Ex P3 is the postmortem certificate issued by P.W.5. He has opined that due to the grievous injuries on the skull, Devamanoharan died.

5. When the incriminating circumstances were put to the accused, he totally denied his complicity with the crime. The learned Judicial Magistrate, after going through the oral and documentary evidence available before him, had come to an unassailable conclusion that the charge against the accused has not been proved beyond any reasonable doubt and consequently, dismissed the private complaint thereby acquitted the accused. Aggrieved by the findings of the learned trial Judge, the complainant has preferred this appeal.

6. Now the point for consideration in this appeal is whether the offence under Section 304(A) of IPC has been made out against the accused to warrant conviction under the said provisions of law?

7. Heard Mr. K.Kalyanasundaram, the learned counsel for the appellant and Mr.R.Jayaseelan, the learned counsel appearing for the respondent and carefully considered their rival submissions

8. The point:

To attract an offence under Section 304(A) of IPC, the prosecution must prove that the accused had committed rash and negligent act resulting in the death of a person. To hold a person guilty under Section 304(a)of IPC, it must be proved that he had committed rash and negligent act resulting in the death of a person. The earliest complaint preferred by P.W.1 with the police is on 27.8.1997 at 11.00 a.m., The said complaint was preferred by P.W.1, the widow of the deceased Devamanoharan. She and her minor son were pillion riders of the scooter bearing Registration No.TN-41-B-2959 driven by Devamanoharan at the time of the occurrence. In the said complaint was marked as Ex P1. A reading of Ex P1 will clearly go to

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show that at the time of accident, the accused on his scooter came from the opposite direction and dashed against the scooter driven by Devamanoharan. Nowhere in Ex P1, it is alleged that the accident had occurred only due to the rash and negligent act of the accused.

9. One of the eye witnesses to the occurrence viz., Tamilarasan was examined before the trial Court as P.W.4. Even though, there was no allegation against the accused that he was,at the time of accident had driven his vehicle in a rash and negligent manner. P.W.4 in the chief examination would depose that the accused came in a high speed in the scooter and dashed against the scooter of the deceased. But in the cross examination, he would depose that at the time of preferring the complaint, P.W.1, the complainant was not present. But a perusal of Ex P1 itself will go to show that the complaint was preferred only by P.W.1. In such type of cases, the evidence of Motor Vehicle Inspector is very very important one to decide whether the accused had driven his vehicle in a rash and negligent manner at the time of accident or whether the accident had occurred only due to the mechanical defect. Absolutely, there is no evidence on record to show that whether the accident had occurred due to mechanical defects or due to the rash and negligent act of the accused alone or due to the rash and negligent act of the deceased also. Under such circumstmances,s the trial Court has come to a correct conclusion that the complainant has failed to prove the guilt of the accused under Section 304(A) IPC. Under such circumstances, I do not find any reason to interfere with the well considered judgment of the trial Court which does not suffer from any illegality or infirmity. Point is answered accordingly.

11.In the result, this appeal is dismissed confirming the Judgment in STC No. 1547 of 1998 on the file of the Court of Judiciall Magistrate, Udumalpet.

sg

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. The Judicial Magistrate NO.I,Udumalpet

2. Though- The Chief Judicial Magistrate, coimbatore

+1 cc to Mr.K.Kalyanasundaram, Advocate Sr.No.14916.

MM(CO)
dcp/21.3.07 Crl.A.No.469 of 2003

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